



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2013-0010]

RIN 1625-AA00

Safety Zone; Grain-Shipment and Grain-Shipment Assist Vessels,
Columbia and Willamette Rivers

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone around all inbound and outbound grain-shipment and grain-shipment assist vessels involved in commerce with the Columbia Grain facility on the Willamette River in Portland, OR, the United Grain Corporation facility on the Columbia River in Vancouver, WA, the Temco Irving facility on the Willamette River in Portland, OR, the Temco Kalama facility on the Columbia River in Kalama, WA, or the Louis Dreyfus Commodities facility on the Willamette River in Portland, OR while they are located on the Columbia and Willamette Rivers and their tributaries. For grain-shipment vessels, this safety zone extends to waters 500 yards ahead of the vessel and 200 yards abeam and astern of the vessel. For grain-shipment assist vessels, this safety zone extends to

waters 100 yards ahead of the vessel and 50 yards abeam and astern of the vessel. These safety zones are being established to ensure that protest activities related to a labor dispute do not create hazardous navigation conditions for any vessel or other river user in the vicinity of these safety zones.

DATES: This rule is effective as to persons with actual notice from August 30, 2013 through September 18, 2015. In compliance with 5 U.S.C. 552(a)(1), this rule is effective without actual notice from the date it is published in the Federal Register, [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], until September 18, 2015.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG-2013-0010]. To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type the docket number in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12-140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail LTJG Ian P. McPhillips, Waterways Management Division, Marine Safety Unit Portland, U.S. Coast Guard;

telephone (503) 240-9319, e-mail msupdxwwm@uscg.mil. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366-9826.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of Proposed Rulemaking
TFR	Temporary Final Rule

A. Regulatory History and Information

On June 4, 2013, the Coast Guard published a temporary interim rule and request for comments titled, "Safety Zone; Grain-Shipments and Grain-Shipments Assist Vessels, Columbia and Willamette Rivers" in the Federal Register (78 FR 33224). In that temporary interim rule, the Coast Guard established temporary safety zones around all inbound and outbound grain-shipments and grain-shipments assist vessels. Although the Coast Guard had good cause to issue that temporary interim rule without first publishing a proposed rule, it invited the submission of post-promulgation comments and related material regarding that rule through July 5, 2013. The Coast Guard received one submission to the docket that raised several objections.

B. Basis and Purpose

Coast Guard Captains of the Port are granted authority to

establish safety and security zones in 33 CFR 1.05-1(f) for safety and environmental purposes as described in 33 CFR part 165.

This safety zone is being implemented to ensure the safe navigation of maritime traffic on the Columbia and Willamette Rivers and their tributaries while grain-shipment and grain-shipment assist vessels transit to and from grain export facilities, anchorages, moorings, and launches in the Sector Columbia River Captain of the Port Zone. In addition, this safety zone is intended to ensure that members of the maritime public, those participating in protest activities on the water, law enforcement personnel, and vessel crews are not injured. Recreational boating, fishing, and protest activity afloat in these safety zones is particularly hazardous because of the effects of strong river currents, the maneuvering characteristics of grain-shipment vessels, and the safety sensitive mid-stream personnel transfers conducted by grain-shipment assist vessels with which recreational boaters and protesters may be unfamiliar. This safety zone applies equally to all waterway users and is intended to allow maximum use of the waterway consistent with safe navigation. The impact of the safety zone on maritime activity in the area is minimal because it has been and will only be enforced at times when grain-shipment and grain-shipment assist vessels are actively maneuvering. Grain-shipment vessel

means any vessel bound for or departing or having previously loaded cargo at any of the following waterfront facilities: Columbia Grain in Portland, OR, United Grain Corporation in Vancouver, WA, Temco Irving in Portland, OR, Temco Kalama in Kalama, WA, or Louis Dreyfus Commodities in Portland, OR. This includes any vessel leaving anchor in the Columbia and Willamette Rivers that is bound for or had previously departed from the aforementioned waterfront facilities. Grain-shipment assist vessel means any vessel bound for or departing from a grain-shipment vessel to assist it in navigation during the movement of the grain-shipment vessel in the Columbia and Willamette Rivers and their tributaries. This includes but is not limited to tugs, pilot boats, and launches.

C. Discussion of Comments, Changes and the Final Rule

This temporary final rule is unchanged from the temporary interim rule that was published on June 4, 2013 (78 FR 33224) as no substantive changes have been deemed necessary. One commenter submitted a letter to the docket containing several objections. The commenter asserted that the safety zones were unnecessary and overbroad. Specifically, the commenter questioned the necessity of the size of these zones. The sizes of these zones are based on the average size of the grain-shipment vessels operating on the river. The deep-draft grain-shipment vessels that operate on the river are typically between 600 and 800 feet in length. In

general, deep-draft grain-shipment vessels maneuvering to or from a berth or anchorage operate at slow ahead, roughly between 6 knots and 4 knots. At this speed, it takes vessels such as these up to four ship lengths or about 1,000 yards to stop. Based on these speed and deceleration rates, a vessel would have roughly six minutes to clear the 500 yard length of the zone in sufficient time so as not to collide with incoming vessels. The size of the safety zones specific to grain-shipment vessels established in this rule were, therefore, predicated upon this "six minute pre-collision period" and are deemed necessary in order to significantly reduce the risk posed by limited ship-to-boat communications and risk of propulsion failure by vessels or watercraft operating in the vicinity of grain-shipment vessels. The establishment of the 100 yard safety zone ahead of grain-shipment assist vessels mitigates the high risk of injury posed by the safety sensitive mid-stream transfer of personnel from one vessel to another and the mooring/anchorage operations conducted by grain-shipment assist vessels with which recreational boaters and protesters may be unfamiliar.

The commenter expressed the importance of "on-water picketing" in publicizing the ongoing labor dispute and concern that the safety zones unnecessarily burden the International Longshore and Warehouse Union's ability to convey their message to their intended audience of "incoming vessels." The Coast

Guard disagrees. Vessel operators may operate in any part of the river outside of the zones so long as they do so in accordance with the navigational rules. Additionally, the safety zone is not so large as to prevent vessels from coming within sight of inbound grain-shipment and grain-shipment assist vessels.

The commenter also disagreed with the Coast Guard's suggested use of on-water assembly areas. Prior to promulgation of the initial safety zone, outreach meetings were held between the local Captain of the Port, Columbia River Pilots, and union members. Based on these meetings, the Coast Guard proposed on-water assembly areas where protesters could safely exercise their First Amendment rights. Vessel operators may operate in any part of the river outside of the zones so long as they do so in accordance with the navigational rules. Finally, the comment misconceives the safety zones as being continuously enforced. The rule has been and will be enforced for narrow spans of time and only after notice is provided via Broadcast Notice to Mariners.

The commenter asserted that the proposed rule singles out labor unions for differential treatment and that "regulating labor protests is the true object of this rule." We disagree. The safety zones created by the rule apply to all vessels not otherwise exempted and are intended to ensure the safe navigation of maritime traffic and protect the safety of life and property

on the Columbia and Willamette rivers.

The commenter asserted the location of the safety zones would be unpredictable when the grain-shipment and grain-shipment assist vessels are in transit. The location of the safety zones will not be unpredictable. Enforcement of the safety zones will be preceded by a notice of enforcement via a Broadcast Notice to Mariners. This notification of enforcement will inform all waterway users that a safety zone is being enforced and will specifically identify the grain-shipment vessel by name and number and the grain-shipment assist vessels by name.

The commenter also expressed concern that an incoming vessel could purposefully cause on-water picketers to violate the temporary safety zones by skirting the shore closest to where the picket is staged, thus causing the protestors to inadvertently violate the safety zone. The Coast Guard does not anticipate that incoming vessels will operate in the manner described by the commenter. The operators of the grain-shipment and grain-shipment assist vessels are professional licensed mariners subject to Coast Guard oversight, and operating a grain-shipment vessel in the manner described by the comment may violate the Navigation Rules. Additionally, since these safety zones were promulgated, the Coast Guard has not received reports of grain-shipment vessels operating in the manner described by the commenter.

The commenter also asserted that the rule is inconsistent with the National Labor Relations Act, 29 U.S.C. 151 *et seq.*, because it prohibits picketing activity. However, the safety zones in the rule do not prohibit picketing, or other concerted activities by employees. Vessel operators, including those engaged in picketing activity, may operate in any part of the river outside of the zones so long as they do so in accordance with the navigational rules.

D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes and executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders. Although this rule will restrict access to the regulated area, the effect of this rule will not be significant because: (i) the safety zones are limited in size; (ii) the official on-scene patrol may authorize access to the

safety zone; (iii) the safety zone will effect a limited geographical location for a limited time; and (iv) the Coast Guard will make notifications via maritime advisories so mariners can adjust their plans accordingly.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received 0 comments from the Small Business Administration on this rule. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule may affect the following entities some of which may be small entities: the owners and operators of vessels intending to operate in the area covered by the safety zone created in this rule.

This rule will not have a significant economic impact on a substantial number of small entities for the following reasons: (i) the safety zone is limited in size; (ii) the official on-scene patrol may authorize access to the safety zone; (iii) the

safety zone will effect a limited geographical location for a limited time; and (iv) the Coast Guard will make notifications via maritime advisories so mariners can adjust their plans accordingly.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. In preparing this temporary final rule, the Coast Guard carefully considered the rights of lawful protestors. The safety zone created by this rule does not prohibit members of the public from assembling on shore or expressing their points of view from locations on shore. In addition, the Captain of the Port has, in coordination with protesters, recommended water areas in the vicinity of these safety zones where those desiring to do so can assemble and express their views without compromising navigational safety. Protesters are asked to contact the person listed in the "FOR FURTHER INFORMATION CONTACT" section to coordinate protest activities so that your

message can be received without jeopardizing the safety or security of people, places, or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children from Environmental Health Risks

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety

Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This action is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have determined that this action is one of a category

of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishment of a temporary safety zone around grain-shipment and grain-shipment assist vessels involved in commerce with grain export facilities on the Columbia and Willamette Rivers. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1226, 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6,

and 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Revise § 165.T13-239 to read as follows:

§ 165.T13-239 Safety Zone; Grain-Shipment Vessels and Grain-Shipment Assist Vessels, Columbia and Willamette Rivers.

(a) Definitions. As used in this section:

(1) *Federal Law Enforcement Officer* means any employee or agent of the United States government who has the authority to carry firearms and make warrantless arrests and whose duties involve the enforcement of criminal laws of the United States.

(2) *Navigable waters of the United States* means those waters defined as such in 33 CFR part 2.

(3) *Navigation Rules* means the International Regulations for Preventing Collisions at Sea, 1972 (commonly called 72 COLREGS) and the Inland Navigation Rules published in 33 CFR part 83.

(4) *Official Patrol* means those persons designated by the Captain of the Port to monitor a vessel safety zone, permit entry into the zone, give legally enforceable orders to persons or vessels within the zone and take other actions authorized by the Captain of the Port. Federal Law Enforcement Officers authorized to enforce this section are designated as the Official Patrol.

(5) *Public vessel* means vessels owned, chartered, or operated by the United States, or by a State or political subdivision thereof.

(6) *Grain-shipment vessel* means any vessel bound for or departing or having previously loaded cargo at any of the following waterfront facilities: Columbia Grain in Portland, OR, United Grain Corporation in Vancouver, WA, Temco Irving in Portland, OR, Temco Kalama in Kalama, WA, or Louis Dreyfus Commodities in Portland, OR. This includes any vessel leaving anchor in the Columbia and Willamette Rivers that is bound for or had previously departed from the aforementioned waterfront facilities.

(7) *Grain-shipment assist vessel* means any vessel bound for or departing from a grain-shipment vessel to assist it in navigation during the movement of the grain-shipment vessel in the Columbia and Willamette Rivers and their tributaries. This includes but is not limited to tugs, pilot boats, and launches.

(8) *Oregon Law Enforcement Officer* means any Oregon Peace Officer as defined in Oregon Revised Statutes section 161.015.

(9) *Washington Law Enforcement Officer* means any General Authority Washington Peace Officer, Limited Authority Washington Peace Officer, or Specially Commissioned Washington Peace Officer as defined in Revised Code of Washington section 10.93.020.

(b) Location. The following areas are safety zones: All navigable waters of the United States within the Sector Columbia River Captain of the Port Zone, extending from the surface to the sea floor, that are:

(1) Not more than 500 yards ahead of grain-shipment vessels and 200 yards abeam and astern of grain-shipment vessels underway on the Columbia and Willamette Rivers and their tributaries.

(2) Not more than 100 yards ahead of grain-shipment assist vessels and 50 yards abeam and astern of grain-shipment assist vessels underway on the Columbia and Willamette Rivers and their tributaries.

(3) Within a maximum 200-yard radius of grain-shipment vessels when anchored, at any berth, moored, or in the process of mooring on the Columbia and Willamette Rivers.

(c) Effective Period. This section is effective as to persons with actual notice starting August 30, 2013. This rule is effective starting on its publication in the Federal Register **[INSERT DATE OF PUBLICATION]** for purposes of 5 U.S.C. 552. This rule will be in effect until September 18, 2015 and will be activated for enforcement as described in paragraph (d) of this section.

(d) Notice of Enforcement. (1) The Sector Columbia River Captain of the Port will cause notice of the enforcement of the grain-shipment and grain-shipment assist vessels safety zone to be made by all appropriate means to effect the widest publicity among the affected segments of the public as practicable, in accordance with 33 CFR 165.7. This notification of enforcement will identify the grain-shipment vessel by name and IMO number

and the grain-shipment assist vessels by name. Such means of notification may include, but are not limited to, Broadcast Notices to Mariners or Local Notices to Mariners. The Sector Columbia River Captain of the Port will issue a Broadcast Notice to Mariners or Local Notice to Mariners notifying the public when enforcement of the safety zone is suspended.

(2) Upon notice of enforcement by the Sector Columbia River Captain of the Port, the Coast Guard will enforce the safety zone in accordance with rules set out in this section. Upon notice of suspension of enforcement by the Sector Columbia River Captain of the Port, all persons and vessels are authorized to enter, transit, and exit the safety zone, consistent with the Navigation Rules.

(e) Regulation. (1) In accordance with the general regulations in § 165.23 of this part, entry into or movement within these zones is prohibited unless authorized by the Sector Columbia River Captain of the Port, the official patrol, or other designated representatives of the Captain of the Port.

(2) To request authorization to enter or operate within the safety zone contact the on-scene official patrol on VHF-FM channel 16 or 13, or the Sector Columbia River Command Center at phone number (503) 861-6211. Authorization will be granted based on the necessity of access and consistent with safe navigation.

(3) Vessels authorized to enter or operate within the safety zone shall operate at the minimum speed necessary to maintain a safe course and shall proceed as directed by the on-scene official patrol. The Navigation Rules shall apply at all times within the safety zone.

(4) Maneuver-restricted vessels. When conditions permit, the on-scene official patrol, or a designated representative of the Captain of the Port at the Sector Columbia River Command Center, should:

(i) Permit vessels constrained by their navigational draft or restricted in their ability to maneuver to enter or operate within the safety zone in order to ensure a safe passage in accordance with the Navigation Rules; and

(ii) Permit commercial vessels anchored in a designated anchorage area to remain at anchor within the safety zone; and

(iii) Permit vessels that must transit via a navigable channel or waterway to enter or operate within the safety zone in order to do so.

(f) Exemption. Public vessels as defined in paragraph (a) of this section are exempt from complying with paragraph (e) of this section.

(g) Enforcement. Any Coast Guard commissioned, warrant, or petty officer may enforce the rules in this section. In the navigable waters of the United States to which this section

applies, when immediate action is required and representatives of the Coast Guard are not present or are not present in sufficient force to provide effective enforcement of this section, any Federal Law Enforcement Officer, Oregon Law Enforcement Officer, or Washington Law Enforcement Officer may enforce the rules contained in this section pursuant to 46 U.S.C. 70118. In addition, the Captain of the Port may be assisted by other federal, state, or local agencies in enforcing this section.

(h) Waiver. The Captain of the Port Columbia River may waive any of the requirements of this section for any vessel or class of vessels upon finding that operational conditions or other circumstances are such that application of this section is unnecessary or impractical for the purpose of port safety or environmental safety.

Dated: August 30, 2013.

B. C. Jones,
Captain, U.S. Coast Guard,
Captain of the Port,
Sector Columbia River.

[FR Doc. 2013-22611 Filed 09/17/2013 at 8:45 am; Publication
Date: 09/18/2013]